

HOUSE BILL NO. 724

INTRODUCED BY FUREY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING REQUIREMENTS FOR SERVICE CONTRACTS AS PART OF CERTAIN BUSINESS ARRANGEMENTS; REQUIRING INSURANCE OF SERVICE CONTRACTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Administrator" means the person who is responsible for the administration of service contracts.

(2) "Department" means the department of justice provided for in 2-15-2001.

(3) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, limited liability company, limited liability partnership, joint-stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(4) "Provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(5) "Reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's nonperformance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider.

(6) "Service contract" has the meaning provided in 33-1-102(10)(b).

(7) "Service contract holder" or "contract holder" means the person who is the purchaser or holder of a service contract.

NEW SECTION. **Section 2. Requirements for conducting business.** (1) A provider may appoint an administrator or other designee to be responsible for any or all of the administration of service contracts in compliance with [sections 1 through 4].

(2) Service contracts may not be issued, sold, or offered for sale in the state unless the provider complies

1 with the requirements of one of the following three provisions:

2 (a) insures all service contracts under a reimbursement insurance policy issued by an insurer that is
3 licensed, registered, or otherwise authorized to do business in the state and either:

4 (i) at the time the policy is issued and during the duration of the policy, maintains a surplus as to
5 policyholders and paid-in capital of at least \$15 million and annually files copies of the insurer's financial
6 statements, its national association of insurance commissioners annual statement, and any actuarial certification
7 required by and filed in the insurer's state of domicile; or

8 (ii) at the time the policy is issued and during the duration of the policy, maintains a surplus as to
9 policyholders and paid-in capital of less than \$15 million but at least equal to or greater than \$10 million and:

10 (A) upon request of the department, demonstrates that the company maintains a ratio of net written
11 premiums, whenever written, to surplus as to policyholders and paid-in capital of not greater than 3-to-1; and

12 (B) annually files copies of the insurer's audited financial statements, its national association of insurance
13 commissioners annual statement, and any actuarial certification required by and filed in the insurer's state of
14 domicile;

15 (b) (i) maintains a funded reserve account, which may be subject to examination and review by the
16 department, for its obligations under its contracts issued and outstanding in this state, the reserves of which may
17 not be less than 40% of gross consideration received, less claims paid, on the sale of the service contract for all
18 service contracts issued and in force;

19 (ii) maintains a financial security deposit having a value of not less than 5% of the gross consideration
20 received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not
21 less than \$25,000 and consisting of one of the following:

22 (A) a surety bond issued by an authorized surety;

23 (B) securities of the type eligible for deposit by authorized insurers in this state;

24 (C) cash; or

25 (D) a letter of credit issued by a qualified financial institution; or

26 (c) maintains, either alone or with its parent company, a net worth of stockholders' equity of \$100 million
27 and provides the department, upon request, with:

28 (i) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed
29 with the securities and exchange commission within the last calendar year; or

30 (ii) if the company does not file with the securities and exchange commission, a copy of the company's

audited financial statements showing a net worth of the provider or its parent company of at least \$100 million.

(3) If information requested in subsection (2)(c)(i) or (2)(c)(ii) comes from the provider's parent company, then the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(4) Except for the requirements provided in subsection (2), no other financial security requirements may be required.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by the providers and related service contract sellers, administrators, and other persons are exempt from all provisions in Title 33, as provided in 33-1-102(10)(a).

NEW SECTION. Section 3. Required disclosures -- reimbursement insurance policy. (1)

Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state must state that the insurer that issued the reimbursement insurance policy shall either reimburse or pay on behalf of the provider any covered sums that the provider is legally obligated to pay or, in the event of the provider's nonperformance, shall provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.

(2) If covered service is not provided by the provider within 60 days of proof of loss by the service contract holder, the contract holder is entitled to apply directly to the reimbursement insurance company.

NEW SECTION. Section 4. Required disclosure -- service contracts. (1) Service contracts

marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed in clear understandable language that is easy to read and must disclose the requirements set forth in this section, as applicable.

(2) Service contracts insured under a reimbursement insurance policy pursuant to [section 2(2)(a)] must contain the following items:

(a) a statement that is in a form identical or similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

(b) the name and address of the insurer.

(3) Service contracts not insured under a reimbursement insurance policy pursuant to [section 2(2)(a)] must contain a statement that is in a form identical or similar to the following: "Obligations of the provider under

1 this service contract are backed by the full faith and credit of the provider."

2 (4) Service contracts must state the name and address of the provider and must identify any
3 administrator if different from the provider, the service contract seller, and the service contract holder if provided
4 by the holder. The identities of all parties referred to in this subsection are not required to be preprinted on the
5 service contract and may be added to the service contract at the time of the sale.

6 (5) A service contract or the service contract holder's receipt must state the total purchase price and the
7 terms under which the contract is sold. The purchase price is not required to be preprinted on the service
8 contract and may be negotiated at the time of the sale with the service contract holder.

9 (6) Service contracts must state the existence of any deductible amount, as applicable.

10 (7) Service contracts must specify the merchandise and services to be provided and any limitations,
11 exceptions, or exclusions.

12 (8) Service contracts covering automobiles must state whether the use of nonoriginal manufacturer's
13 parts are allowed.

14 (9) Service contracts must state any restrictions governing the transferability of the service contract, as
15 applicable.

16 (10) Service contracts must state the terms, restrictions, or conditions governing cancellation of the
17 service contract prior to the termination or expiration date of the service contract by either the provider or service
18 contract holder.

19 (11) (a) Except as provided in subsection (11)(b), the provider shall mail a written notice to the service
20 contract holder at the last-known address of the contract holder contained in the records of the provider at least
21 5 days prior to the cancellation by the provider.

22 (b) Prior notice is not required if the reason for cancellation is:

23 (i) nonpayment of the provider fee;

24 (ii) a material misrepresentation by the service contract holder to the provider; or

25 (iii) substantial breach of duties by the service contract holder relating to the covered product or its use.

26 (c) Any cancellation notice must state the effective date and reason for the cancellation.

27 (12) Service contracts must set forth all of the obligations and duties of the service contract holder,
28 including the duty to protect against any further damage and any requirement to follow the owner's manual.

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30 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified

1 as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through
2 4].

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4 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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6 NEW SECTION. **Section 7. Applicability.** [This act] applies to service contracts issued on or after
7 January 1, 2008.

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